

## **International Trade Administration**

### **Compensatory Time Policy**

#### **Purpose:**

This issuance sets forth the International Trade Administration's (ITA) policy on earning and use of compensatory time off in lieu of irregular or occasional overtime for ITA employees. This policy is effective immediately and will remain in effect until cancelled or superseded.

#### **Scope:**

This policy applies to all ITA employees who are exempt or non-exempt (i.e., covered) from the Fair Labor Standards Act (FLSA) and who are eligible to earn compensatory time off earned in lieu of irregular or occasional overtime. This policy does not apply to Career and Non-Career SES employees and to Schedule C employees.

#### **Background:**

Effective May 14, 2007, the Office of Personnel Management published final regulations setting timeframes for the use of compensatory time off earned in lieu of irregular or occasional overtime. Prior to this regulatory change, there were no Government-wide rules on the accumulation and use of compensatory time and payout or forfeiture policies.

The new regulations provide two distinct time periods on when compensatory time must be used, paid out, or forfeited, and are based on when the compensatory time was earned:

- Hours earned on or after May 14, 2007, but not used within 26 pay periods of the date that it was earned; and
- Hours earned prior to May 14, 2007, but not used before May 22, 2010.

#### **Policy:**

##### Limit on Compensatory Hours Earned:

All ITA employees eligible to earn compensatory time and who are covered by this policy are subject to an 80-hour cap on the number of compensatory hours that may be earned and carried as a balance at any time. This cap will prevent employees from accumulating large balances of compensatory time that they may not be able to use within the required 26 pay periods. This will also limit the associated financial liability for the business unit.

#### Payment of Accrued and Unused Hours:

Payment for unused compensatory time off for ITA employees will depend on whether the employee is FLSA non-exempt or exempt:

FLSA non-exempt employees must be paid for accumulated compensatory time hours off if the:

- Hours were earned on or after May 14, 2007 and not used by the end of the last week of the 26<sup>th</sup> pay period from the date earned;
- Hours were earned before May 14, 2007 and not used by May 22, 2010;
- Employee transfers or separates from the Department before using or being paid out for compensatory time earned on or after May 14, 2007; or
- Employee transfers within the Department and the gaining bureau will not accept the financial liability for accrued compensatory time hours.

FLSA exempt and non-exempt employees must be paid for compensatory time hours off if the:

- Employee is separated or placed in a leave without pay (LWOP) status:
  - To perform service in the uniformed services; or
  - Due to an on-the-job injury with entitlement to injury compensation under title 5 U.S.C. chapter 81.

Employees covered by the FLSA (non-exempt) will be paid for any unused compensatory time hours earned before May 14, 2007 and not used by May 22, 2010.

#### Forfeiture of Accrued and Unused Hours:

Employees exempt from the FLSA with compensatory hours that were earned before May 14, 2007 and have not been used by May 22, 2010, will forfeit the hours. FLSA exempt employees with compensatory hours that were earned after May 14, 2007 and not used by the end of the last week of the 26<sup>th</sup> pay period from the date earned will forfeit the hours. There is no authority to restore forfeited hours. The only circumstances where a FLSA exempt employee will be paid for any unused compensatory time hours earned before May 14, 2007 is when:

- Failure to use the earned compensatory time off is due to an exigency of the service beyond the employee's control;
- The employee separates or is placed in leave without pay (LWOP) status:

- To perform service in the uniformed services; or
- Due to an on-the-job injury with entitlement to injury compensation under title 5 U.S.C. chapter 81.

However, FLSA non-exempt employees with compensatory hours that were earned before May 14, 2007 and that have not been used by May 2010, must be paid for the hours earned.

### **Procedures and Responsibilities:**

To assist managers in tracking these time limits, the Department of Commerce Human Resources Operations Center (DOC HROC), which is ITA's servicing HR office, issues a report each pay period to ITA's administrative contacts/resource coordinators in the business units notifying them of their employees' unused compensatory time off balances and the projected 26<sup>th</sup> pay period time limit for use. ITA's Deputy Assistant Secretaries (DAS) are responsible for managing the compensatory time balances for their staff as well as the financial liability for accrued compensatory time hours. As such, they should ensure that supervisors:

- Monitor the approval, accrual, and use of compensatory time for their employees;
- Arrange the work requirements of the office so employees with accrued compensatory time hours have an opportunity to use the time;
- Submit form CD-529, Lump Sum Leave or Compensatory Time Payments, to the DOC HROC for payment processing of unused compensatory time hours for eligible employees after the pay period in which it expires. Compensatory time hours paid out under this policy will be paid at the overtime rate in effect during the period of time that it was earned.

The DOC HROC will:

- Provide the ITA's administrative contacts/resource coordinators with a pay period listing of their employees who have accrued compensatory time;
- Monitor compensatory time balances in the National Finance Center (NFC) system, ensure payment processing for unused time upon receipt of the CD-529, update NFC leave balances once payments are processed and when balances are forfeited; and
- Notify ITA timekeepers to adjust compensatory time balances once payments are processed;
- Notify ITA timekeepers to adjust compensatory time balances in webTA for employees who must forfeit unused and expired compensatory time; and
- Educate managers and employees on compensatory time.

Employees are also responsible for monitoring their compensatory time balances and using compensatory time before it expires. To ensure that employees have an opportunity to use previously accrued compensatory time off balances, employees should develop a “compensatory time spend plan” with their supervisors that maps out the use of all pre-May 2007 earned compensatory time prior to May 22, 2010.